

Appl. No. : 10/706,346
Filed : November 12, 2003

REMARKS

Claims 1, 3-21 and 86-106 were considered by the Examiner. Claim 1 has been amended. Claims 107-109 have been added. Therefore, Claims 1, 3-21, and 86-109 are before the Examiner for consideration. No new matter has been submitted with these amendments.

Summary of Office Action

The Examiner rejected Claims 1, 3-8, 13, 21, 88, 89, 90, 92, 93, 94, 96, 98, 101, 103, and 104 under 35 U.S.C. § 102(b) as anticipated by Berry et al (U.S. Patent No. 6,293,958). The Examiner further rejected Claim 1 under 35 U.S.C. § 102(e) as being anticipated by Shmulewitz et al. (U.S. Patent No. 6,569,145). The Examiner also rejected several claims as obvious based on a combination of Berry and other references. In particular, Claims 9-12 and 86 were rejected in view of Berry and Viole et al. (U.S. Patent Application Publication No. 2002/0188167); Claims 14-17 were rejected in view of Berry and Hedge et al. (U.S. Patent No. 6,231,543); Claims 18-20 were rejected in view of Berry and Duchamp (U.S. Patent No. 6,575,934); and Claims 87, 91, 95, 97, 99, 100, and 104-106 were rejected in view of Berry and Kurth et al. (U.S. Patent No. 5,792,188). Applicant disagrees with these rejections, but has amended Claim 1 to expedite allowance. In view of the claim amendments presented herein and the remarks below, Applicant requests that these claim rejections should be withdrawn.

Personal Interview

Applicant thanks Examiner Koharski for the courteous and helpful personal interview conducted on November 29, 2006 (summarized above), and a subsequent follow-up telephone interview on January 5, 2007.

Claim 1

Claim 1 stands rejected over Berry et al. and Shmulewitz et al. Claim 1 has been amended to recite "a redirecting member comprising an expandable member configured to expand under the pressure of the blood flow directed through the discharge opening such that at least a portion of the expandable member is spaced from the discharge opening by a greater amount than prior to such expansion, the expandable member presenting a concave redirecting

surface to blood flowing through the discharge opening when expanded” For at least the reasons discussed below, Applicant believes Claim 1 to be in condition for allowance.

--Berry

In contrast to the redirecting member recited in Claim 1, Berry presents a plurality of cut “U-shaped hinged flaps” positioned in a flow-diffusing distal tip of a catheter. (Berry, Col. 3: ll 7-8.) A flow of fluid through the catheter results in the hinged flaps tending to “deform through the three-sided opening defined by the cuts and enter the space occupied by the lumen.” (Col. 3: ll. 12-15.) Thus, the flaps disclosed by Berry maintain a substantially constant geometry that is merely pivoted to diffuse fluid flow. (Berry, Figure 1). Also, the Berry flaps bend outwards (as indicated in Figure 1) to permit fluid to escape. Thus, Berry does not disclose, among other limitations, an “expandable member presenting a concave redirecting surface to blood flowing through the discharge opening when expanded,” as is recited in Claim 1 of the present application.

--Shmulewitz

Shmulewitz likewise fails to disclose all of limitations recited in Claim 1. Shmulewitz discloses a catheter having a distal end region that is selected to sealingly engage and occlude a targeted portion of a vessel when urged therein. (Shmulewitz, Col. 8: ll. 35-38.) Shmulewitz discloses valves formed by incising the catheter to create elongated U-shaped flaps. (Col. 8: ll. 54-56; Fig. 9a.) The flaps bend outwards (as indicated in Figure 9a) to permit blood to escape. Thus, Shmulewitz does not disclose, among other limitations, an “expandable member presenting a concave redirecting surface to blood flowing through the discharge opening when expanded,” as is recited in Claim 1 of the present application.

Dependent Claims

Claims 3-21 and 86-106 depend from Claim 1 and recite further novel and non-obvious combinations of features. Therefore, Claims 3-21 and 86-106 are allowable for at least the reasons discussed above.

Appl. No. : **10/706,346**
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Applicant notes that the Examiner has raised several rejections of these dependent claims, citing combinations of various references with Berry. Because Applicant believes that these claims are allowable for at least the reasons discussed above with respect to Claim 1, Applicant does not comment herein on the Examiner's interpretation and application of the cited combinations to the present application. However, Applicant does not concede that Examiner has correctly interpreted and applied each of the cited references to the claimed inventions. Therefore, Applicant reserves the right to evaluate these references in further detail with respect to later claims that may be developed in this or other applications.

New Claims 107-109

Applicant presents new Claims 107-109, which recite further novel and non-obvious combinations of features that are supported by the specification as filed. Therefore, Applicant respectfully submits that Claims 107-109 are directed to allowable subject matter.

CONCLUSION

In view of the above discussion, Applicant respectfully submits that Claims 1, 3-21, and 86-109 are in condition for allowance. Applicant solicits a Notice of Allowance at the Examiner's earliest convenience.

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Andrew Douglas at (949) 721-7623, to resolve such issues promptly.

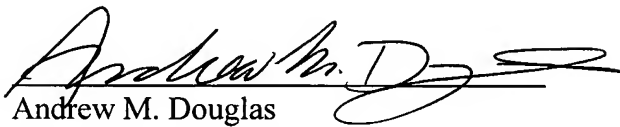
Appl. No. : **10/706,346**
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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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